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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,343	02/23/2004	Greg Volgas	00306-00355-US	2346
23416	7590	11/03/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			PRYOR, ALTON NATHANIEL	
P O BOX 2207			ART UNIT	
WILMINGTON, DE 19899			PAPER NUMBER	

1616

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,343

Applicant(s)

VOLGAS ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1 and 91-101 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,91-101 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/23/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments filed 8/8/05 have been fully considered but they are not persuasive.

I. Rejection of claim 1 under 35 USC 103(a) as being obvious over AF300 from Nufarm MSDS, Infosafe No. NU003 will be maintained for reason on record and reason as follows. Claims 91,93-101 are added to this rejection. Applicant argues that herbicide AF300 (2,4-D) does not dissolve in the surfactant (an alcohol ethoxylate) as required by Applicant's invention. Examiner argues that Applicant does not specify the degree of solubility of 2,4-D in the surfactant of the instant claims. Therefore, even if 2,4D is only partially or slightly soluble in the surfactant of the prior art invention, the prior art invention will meet the limitation of the instant claims. The conditions at which the 2,4-D is solubilized in the prior art invention are irrelevant since the instant claims set forth no conditions. Applicant set forth a specific example in the declaration (Example 1), but instant claims are broader than the scope of Example 1. Applicant points out that Example 1 shows full solubility. Examiner question is: How does the 2,4-D solubility in the prior art compare to the solubility of 2,4-D in the instant claims. It is obvious that the prior art composition would form a microemulsion once water is added since both inventions are to the mixing of 2,4-D and an ethoxylated alcohol in water.

Applicant argues that instant claims employ the language "consisting essentially of" and for this reason Applicant argues that kerosene would be excluded from instant composition. Applicant states that kerosene would materially affect the activity of the instant composition. Applicant provides a Declaration to state this. Examiner argues that

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Applicant makes a statement as to how kerosene would affect the instant invention in terms of toxicity. However, Applicant provides no data to support the statement. For this reason, the rejection on record is maintained until such data are provided. With respect to instant invention, Examiner concludes that kerosene may not materially affect the activity of the instant compounds.

II. Double Patenting Rejection of claim 1 is maintained for reason on record. Claims 91-101 are added to this rejection. Examiner acknowledges Applicant's willingness to file terminal disclaimer.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Alton Pryor', with a stylized, cursive script.

Alton Pryor
Primary Examiner
AU 1616